

REMARKS

Applicants, through their attorney, respectfully request the Examiner to consider the application in view of the amended claims and the following remarks.

Support

Support for the amendments to the claims has not been disputed by the Examiner. Support for the amendment to claims 1 and 5 comes from claims 17 and 19, now cancelled. Applicants have also amended claim 18 to remove the limitation now present in claim 1 in order to avoid repetition. No other elements of the claims have been changed.

Response

The Examiner has rejected claims 1 and 17-19 under 35 U.S.C. 102(e) as being anticipated by Calder (US 6846782). The Examiner also rejected claims 1-16 under 103(a) as unpatentable over Fetterman, Jr. et al. (US 5102566) in view of Davis (US 4582618) and claims 11 and 20 under 103(a) as unpatentable over Fetterman, Jr. in view of Davis in view of Abraham et al. (US 2002/0006878).

Applicants note that claims 17-19 were only rejected under 102(e) as being anticipated by Calder and no other rejections of claims 17-19 have been made. All of the present claims now incorporate the limitations of claims 17 and 19. Accordingly the 102(e) rejection based on Calder would be the only current rejection that would apply to the amended claims.

The present application claims priority from U.S. provisional application 60/465072, filed on April 23, 2003. Calder (US 6846782) issued on January 25, 2005, after the April 23, 2003 priority date of the present application. Calder was filed on April 4, 2003 and was published as US application 04-0198614 on October 7, 2004. Calder does not claim priority to any earlier filing and the US publication date is believed to be the earliest date of publication of the application or any equivalent. The October 7, 2004 publication date for Calder is after the April 23, 2003 priority date of the present application. Therefore, Calder qualifies under 102(e) as prior art against the present application but not under any other section of 102.

Applicants re-submit herewith the declaration that was provided in the response of January 20, 2009 and entry at this time is requested. The declaration and attached document are available in PAIR under the heading

01-20-2009 AF/D Rule 130, 131 or 132 Affidavits

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Accordingly, it is believed that it is not necessary once again to physically attach the document to this submission; however, the Undersigned would be happy to do so if this

is requested. The declaration shows that the present invention was completed (conceived and reduced to practice) prior to April 4, 2003. Specifically, the chemical identities and formulations of the compositions and processes of the present invention are provided along with the results of testing completed at the time. Due to the antedating by the declaration, Calder is not an available reference against the present application. Therefore, applicants respectfully request all rejections based on Calder be removed. This will leave the present claims free from any substantive rejection.

In the Advisory Action dated 2/18/2009, the Examiner had objected that the declaration did not show or compare the differences between prior art and claims. This could, of course, be a reasonable objection against a declaration under rule 132. However, for the present declaration under rule 131, the intention is not to demonstrate any technical superiority or distinction over the prior art, but rather to antedate the 102(e) reference and thereby remove it entirely. For this reason, it is submitted that the declaration is not deficient.

Conclusion

For the foregoing reasons it is submitted that the present claims are in condition for allowance. The foregoing remarks are believed to be a full and complete response to the outstanding office action. If the Examiner believes that only minor issues remain to be resolved, a telephone call to the Undersigned is suggested.

Any required fees or any deficiency or overpayment in fees should be charged or credited to The Lubrizol Corporation Deposit Account No. 12-2275.

Respectfully submitted,

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